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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1948.

No. 50

JACK O'LEE YOUNG,

Petitioner,

vs.

JOSEPH E. RAGEN, WARDEN, ILLINOIS STATE PENITENTIARY, JOLIET, ILLINOIS,

Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF RANDOLPH COUNTY, STATE OF ILLINOIS.

BRIEF FOR RESPONDENT.

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INDEX.

PAGE

Statement of the Case 1

The Question Presented 3

Argument—

I—The trial court's decision must have rested on that court's view of Illinois' adjective law in which law that view had compelling support at the time of the decision, and not upon the trial court's ignorance of or intention to disobey this Court's decisions that are clearly applicable to the facts alleged by petitioner 4

II—The Illinois trial court's decision on a matter of State adjective law is conclusive here 7

Conclusion 10

Cases Cited.

Carter v. Illinois, 329 U. S. 173 7

Frank v. Magnum, 237 U. S. 309 4

Loftus v. Illinois, 334 U. S. 804 ..... 3, 4

Lutz v. Ragen, 324 U. S. 760 2

Marino v. Ragen, 332 U. S. 561 and 333 U. S. 852 7

People v. Green, 355 Ill. 468 6

People v. Loftus, 400 Ill. 432 ..... 3, 6

People v. Shoffner, 400 Ill. 174 ..... 2, 3, 6

People ex rel. Swolley v. Ragen, 390 Ill. 106 ..... 2, 5

People v. Wilson, 399 Ill. 437 ..... 2, 3, 6

White v. Ragen, 324 U. S. 760 ..... 2, 4, 7

Woods v. Nierstheimer, 328 U. S. 211 ..... 2, 7

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BRIEF FOR RESPONDENT.

STATEMENT OF THE CASE.

We briefly restate what we deem to be the essential substance of the facts, not in correction of the fair, accurate and well written statement in petitioner's brief but in order precisely to delineate the narrow but important question raised upon this record and the single ground upon which respondent maintains that this Court's writ of *certiorari* should be dismissed.

On October 6, 1947, petitioner filed in the Circuit Court of Randolph County, Illinois, his petition for that court's

writ of *habeas corpus*. He alleged his conviction in that court of the crime of burglary upon a plea of guilty entered and received in October of 1946. He alleged unlawful detention *incommunicado*, official refusal not only to tender him counsel but to permit him to procure his own counsel, that he pleaded guilty as a result of coercion, ignorance and fear, that he was deprived of his wife's testimony by unconstitutional means, and other matter aggravating the charges above summarized. The trial court dismissed his petition. We concede that his allegations charged denial of due process under this court's decisions and therefore entitled petitioner to a hearing if his remedy was appropriately conceived. Therefore we do not amplify the details of the charges.

But prior to the *dicta* of the Supreme Court of Illinois at its March, 1948, term in the cases of *People* v. *Wilson*, 399 Ill. 37, and *People* v. *Shoffner*, 400 Ill. 174, all of which were decided *after* the trial court's judgment in this case, it seemed very clear that however egregious might be the denial of due process in cases like this one, *habeas corpus* was not the appropriate mode of vindicating the rights that petitioner clearly had if his assertions were true. *People ex rel. Sudley* v. *Ragen*, 390 Ill. 106. Neither the Attorney General of Illinois nor this Court had read Illinois' law as declaring or even indicating the propriety of *habeas corpus* as a remedy. (Cf. *Woods* v. *Nierstheimer*, 328 U. S. 211, *White* v. *Ragen*, 324 U. S. 760, decided in a single opinion with *Lutz* v. *Ragen*, *id.*)

In this state of the Illinois adjective law the trial court, presumably mindful of this court's declarations of the scope of the Fourteenth Amendment in this sort of case but cognizant of the then standing precedents of the Illinois Supreme Court that severely restricted the scope and office of *habeas corpus*, denied petitioner the writ that he sought.

Subsequently to the trial court's ruling, which is not reviewable by any Illinois appellate court because it is not final and is not a bar to a similar application in the same or another court, the Illinois Supreme Court made statements which, though *dicta*, point plainly to *habeas corpus* as the proper remedy in cases such as this one. *People* v. *Wilson*, 399 Ill. 437, and *People* v. *Shoffner*, 400 Ill. 174, analyzed and discussed in the Argument, *post*. And in September of this year that court made its "announcement" upon this court's remand of *Loftus* v. *Illinois*, remand 334 U. S. 804, announcement in response to remand, *People* v. *Loftus*, 400 Ill. 432.

From these facts emerges the single question stated below, which is the only question that we argue:

The Question Presented.

The question presented is:

WHEN IT APPEARS BY PLAIN INFERENCE THAT A STATE TRIAL COURT DISMISSED A PETITION UPON ITS VIEW OF THE STATE'S ADJECTIVE LAW, WHICH VIEW WAS ADEQUATE TO SUPPORT DISMISSAL IF CORRECT BUT IS NOW PERCEIVED TO HAVE BEEN PROBABLY ERRONEOUS IN THE LIGHT OF *DICTA* OF THE STATE'S SUPREME COURT SUPERVENING BETWEEN THE TIME OF THE TRIAL COURT'S DECISION AND THE TIME THAT THE CASE IS ARGUED HERE, MUST THIS COURT DISMISS ITS *CERTIORARI* IN OBEDIENCE TO THE RULE THAT A STATE COURT'S READING OF THE STATE'S LAW IS AUTHORITATIVE IN THIS COURT EVEN THOUGH IT IS PROBABLY OR ALMOST CERTAINLY ERRONEOUS?

ARGUMENT.

I.

The trial court's decision must have rested on that court's view of Illinois' adjective law in which law that view had compelling support at the time of the decision, and not upon the trial court's ignorance of or intention to disobey this Court's decisions that are clearly applicable to the facts alleged by petitioner.

One need not resort to the presumption, well settled though the presumption is, that a State court's decision rests upon State and not Federal law unless the contrary appears. (Cf. *White* v. *Ragen*, 324 U. S. 760.) In this case unmistakable inference, not mere abstract presumption, makes it clear that the trial court must have premised its judgment of dismissal, not upon denial of petitioner's substantial federal claims, but upon its holding that *habeas corpus* was not appropriate.

Even in the absence of expression or intimation by this court, no trial court would be likely to hold that confining a man *incommunicado*, beating him, refusing to allow him to see a lawyer, and coercing him to plead guilty were in accord with "due process" or "the law of the land." And certainly no court would so hold after the chain of this court's decisions commencing with *Frank* v. *Magnum*, 237 U. S. 309, and continuing down to *Loftus* v. *Illinois*, 334 U. S. 804. This court should not presume that the trial judge was either ignorant of or indifferent to the historic concept of due process and this court's most celebrated decisions declaring its application to cases like this one.

But the trial court was confronted with at least one Illi-

nois Supreme Court decision declaring in unmistakable terms that in cases such as this one *habeas corpus* was not available. In *People ex rel. Swolley* v. *Ragen,* 390 Ill. 106, the Illinois Supreme Court thus stated the facts and declared the applicable rule:

> "Gale E. Swolley presented a motion to this court asking leave to file an original petition for writ of habeas corpus. Petitioner was convicted in the Criminal Court of Cook County in January, 1934, of the crime of kidnapping for ransom and sentenced to imprisonment in the penitentiary for life. Petitioner alleges that he was taken into custody by police officers from Chicago while he was at his place of business in Peoria. That they took him by force to Cook County and illegally held him without the issuance of process for a period of ten days. He states that after said ten day period he filed a petition for writ of habeas corpus, and that to avoid action on such petition the State's Attorney presented the matter to the Grand Jury, and upon consideration thereof an indictment was returned charging him with the crime stated.
>
> The points relied upon for the issuance of the writ are that he was confined in the penitentiary without authority in law, that he was denied due process of law, equal protection of the laws and that in imposing the sentence of imprisonment the judge who presided at the trial of his conviction assumed legislative functions.
>
> It is well settled that the writ of habeas corpus cannot be permitted to take the place of a writ of error for the purpose of reviewing errors of a court having jurisdiction of the person and subject matter. If a court has jurisdiction in a criminal case of the person and of the subject matter, the question whether errors or irregularities have occurred in the exercise of the jurisdiction can only be determined upon a writ of error. Petitioner has failed to set forth facts in his petition showing a lack of jurisdiction of either the subject matter or of his person."

The Illinois Supreme Court thus declared that matter *dehors* the record, existing antecedently to a plea of guilty before a court having jurisdiction in the sense that it was

the appropriate forum and that the prisoner was before it on valid indictment and valid process, could not possibly be raised by *habeas corpus*.

On the other hand, *People* v. *Green*, 355 Ill. 468, taught that *coram nobis* is appropriate where a petitioner has been convicted without counsel and where if he had had counsel he would have had an effective means of asserting a defense which the absence of counsel prevented his making. In the *Green* case state prisoners, who failed to make effective defense because they had no counsel, were held entitled to a relief by way of *coram nobis* in language quoted in the margin (355 Ill. 473).[1]

Confronted by the Supreme Court's holding in the *Swolley* case that *habeas corpus* was not appropriate and in the *Green* case that *coram nobis* was appropriate, there can be no reasonable room for conjecture as to why petitioner's application for *habeas corpus* was dismissed.

People v. *Wilson*, 399 Ill. 437, *People* v. *Shoffner*, 400 Ill. 174, and *People* v. *Loftus*, 400 Ill. 432, were all *writs of error* in which the plaintiffs in error made assertions in their briefs of matter *dehors* the record. In each case the Illinois Supreme Court held the alleged errors not cognizable in the absence of a bill of exceptions but stated, plainly enough but only by way of *obiter*, that *habeas corpus* was appropriate.

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1 "A writ of error *coram nobis*, or a motion under the statute, is an appropriate remedy in criminal cases as well as civil and lies to set aside a conviction obtained by duress or fraud, or where by some excusable mistake or ignorance of the accused, or without negligence on his part, he has been deprived of a defense which he could have used at his trial, and which, if known by the court, would have prevented conviction. (*People* v. *Crooks*, *supra*; *Sanders* v. *State*, 85 Ind. 318, 44 Am. Rep. 29; *State* v. *Calhoun*, *supra*; 2 R. C. L. sec. 266; 18 L. R. A. 842, note; *People* v. *Perez*, 98 Pac. (Cal.) 870.) Since the judgment entered upon such proceeding is final and the proceeding is civil in its nature, either the State or the defendant is entitled to a review of the judgment of the court entered on such motion or petition." (Emphasis ours.)

This, then, is the State of Illinois decisions in the light of which this case is presented to this Court.

It is quite clear that the trial court's judgment was based upon its view that *habeas corpus* was not appropriate. It seems probable, in the light of the *Wilson, Shoffner* and *Loftus dicta,* supervering after the trial court's judgment was entered and before the case is argued here, that the trial court's judgment is not in accord with the present views of the Illinois Supreme Court on a matter of State adjective law.

II.

The Illinois trial court's decision on a matter of State adjective law is conclusive here.

The rule is well settled where it is fairly inferable that a state court rested its judgment upon state adjective law this court "lacks jurisdiction to review." *White* v. *Ragen,* 324 U. S. 760; *Woods* v. *Nierstheimer,* 328 U. S. 211, and *Carter* v. *Illinois,* 329 U. S. 173. It is of course an axiom resulting from dual sovereignty that a State court's decision upon questions of State law is authoritative and binding here just as truly as a decision of this court upon federal questions is binding upon state courts.

That this court will not undertake to correct a State court's decision as to the restricted the ambit of its jurisdiction, even upon confession of error by the Attorney General, is clear from this court's action in *Marino* v. *Ragen,* 332 U. S. 561 and 333 U. S. 852. When the *Marino* case first reached this court the Attorney General conceded that *habeas corpus* was appropriate to release from imprisonment a 20-year-old immigrant boy who was unable

to speak English and had pleaded guilty to a capital offense without counsel. Upon that confession of error this court vacated the opinion and sent it back to the trial court. Mr. Justice Rutledge declared that but for confession of error, this court would have assumed that the trial court grounded its decision upon the impropriety of *habeas corpus* as a remedy under the State law.

After this court's mandate had reached the trial court, that court declared that, notwithstanding the Attorney General's confession of error, Illinois' writ of *habeas corpus* was not appropriate to vindicate petitioner's rights. Thereupon the Attorney General, still convinced that *habeas corpus* was appropriate, petitioned this court for its writ of *mandamus* or other peremptory order commanding the trial court to discharge the prisoner. This court denied the writ.

The Illinois cases declaring or indicating that *habeas corpus* is not appropriate appear to have been repudiated by the Illinois Supreme Court's language in the *Wilson, Shoffner* and *Loftus* cases, all cited above. But the Illinois Supreme Court's expression, although unmistakably clear and apposite, are all *dicta*. **Moreover, they were not announced until after the trial court had passed upon this case.**

Fairness to this court would seem to demand an expression upon the part of the Attorney General of Illinois with regard to his position in this case. The Attorney General has endeavored to reconcile Illinois cases and so to elucidate their teachings as to demonstrate that *coram nobis* is appropriate in all cases such as this one. He has assured this court that *coram nobis* was appropriate and that *habeas corpus* was not appropriate under Illinois' modes of judicature in cases like this one. He gave that assurance in the *White, Lutz,* and *Van Woods* cases.

Whether in the light of the Illinois Supreme Court's

latest *dicta* the Illinois Supreme Court would approve *coram nobis,* habeas corpus, or neither in petitioner's case, the Attorney General can not fairly say. The *dicta* indicate that *habeas corpus* is appropriate, notwithstanding the Attorney General's prior contentions, here and elsewhere, to the contrary. But if he reads aright this court's meaning implied in its action in the *Marino* case, this court does not desire his acquiescence in the reversal of decisions of state trial courts that may have rested upon a ground of state procedure adequate if sound even though the Attorney General may believe that the state court's decision was not well grounded in Illinois' adjective law.

In short, the position of the Attorney General in this case is as follows:

It is unmistakably plain that the trial court based its decision upon a view of state adjective law that was adequate if sound. *Dicta* of the Illinois Supreme Court supervening between the time of the trial court's decision and the argument of this case indicate, but only by way of *dicta,* that the Illinois trial court's view of the law was untenable. But it is not for the Attorney General to confess or for this court to declare that the trial court's judgment is erroneous.

Conclusion.

For the reasons urged in this brief it is respectfully submitted that this court lacked jurisdiction to entertain petitioner's substantive federal claims because the Illinois court's decision rested upon adequate state grounds.

Therefore it is submitted that this court "lacks jurisdiction to review" (*White* v. *Ragen*, 324 U. S. 760) and that the writ of *certiorari* should be dismissed.

Respectfully submitted,

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